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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. Xavier Becerra, Attorney General of
California,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION and BETSY DEVOS, in her
official capacity as Secretary of Education

Defendants.

No. 3:17-cv-7106-SK

**JOINT PROPOSAL FOR FINALIZING
THE ADMINISTRATIVE RECORD**

On February 3, 2020, the Court entered a minute Order directing the parties to meet and confer and to propose a joint proposal or separate competing proposals for finalizing the administrative record. *See* ECF No. 114. The parties have met and conferred and submit the following joint proposal.

1 1. The United States Department of Education and Betsy DeVos in her official
2 capacity as Secretary of Education (collectively, “ED” or “Defendants”) are considering a
3 potential motion for reconsideration with respect to the Court’s December 27, 2019 order (Dkt.
4 105). Defendants shall seek leave of Court, pursuant to Local Rule 7-9, to file any such motion,
5 on or before February 18, 2020. This stipulation shall not in any way waive California’s position
6 that Defendants have not acted with reasonable diligence in bringing a motion for reconsideration.

7 2. If Defendants do not seek leave to file a motion for reconsideration on or before
8 February 18, 2020, Defendants shall add the five documents listed below to the administrative
9 record. The Court has already determined, in its December 27, 2019 order (Dkt. 105), that the
10 first four documents (a-d) must be included and that “it appears that” document (e) “should also
11 be included.”

12 a. Memorandum from the Department’s Office of General Counsel dated
13 May 14, 2015 (Dkt. 90-1 (Tab B) (both the 11-page draft and the 4-page draft));

14 b. Memorandum from the Department’s Borrower Defense Unit to
15 Undersecretary Ted Mitchell, dated October 20, 2016, with the “Re” line: “Recommendation for
16 Borrower Defense Relief for Heald College Borrowers Alleging Transfer of Credit Claims” (Dkt.
17 90-1 (Tab C))

18 c. Memorandum from the Department’s Borrower Defense Unit to
19 Undersecretary Ted Mitchell, dated October 24, 2016, with the “Re” line: “Recommendation for
20 Everest/WyoTech Borrowers Alleging Transfer of Credit Claims” (Dkt. 90-1 (Tab D));

21 d. Memorandum from the Department’s Borrower Defense Unit to
22 Undersecretary Ted Mitchell, dated January 9, 2017, with the “Re” line: “Recommendation for
23 Corinthian Borrowers Alleging That They Were Guaranteed Employment” (Dkt. 90-1 (Tab E));

24 e. Memorandum from the Department’s then-Acting General Counsel,
25 Steven Menashi, dated December 14, 2017, with the “Re” line: “Legal bases for approval and
26 discharge of pending borrower defense claims for former Corinthian students qualifying for
27 approval on the grounds of Job Placement Rate, Guaranteed Jobs, and Transfer of Credit
28 findings,” including appendices (the “Menashi Memorandum”) (Dkt. 96, Entry No. 307);

3. On or before February 18, 2020, Defendants shall identify each document number on their complete privilege log (Dkt. 96) that corresponds to the memoranda attached as subparts to the Corrective Action Plan for December 8, 2017 (Office of Inspector General), which the Court indicated that it would consider separately in its December 27, 2019 order (Dkt. 105 at 8 n.5).

4. Defendants shall complete their review of whether the documents in the narrowed set of documents identified on the Department's privilege log for the entire administrative record (Dkt. 110-1) have been released in response to a Freedom of Information Act request by February 28, 2020, and provide California with the results of its review on a rolling basis.

5. By March 20, 2020, the parties will meet and confer and file a joint status report proposing a schedule to the Court for submitting any further documents for the Court to review *in camera* and to brief any remaining privilege issues. The parties anticipate briefing these issues expeditiously, allowing them to be submitted for a decision in April 2020.

6. After the Court's resolution of the parties' motions regarding privilege issues, if any, the parties shall meet and confer on any remaining issues related to the administrative record and a dispositive motion briefing schedule, and propose a schedule to the Court as needed.

Dated: February 13, 2020

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